S.B. CRIMINAL MISC. PETITION NO. 14/2003
S.B. CRIMINAL MISC. PETITION NO. 15/2003
S.B. CRIMINAL MISC. PETITION NO. 16/2003

Date : 14.08.2007

HON'BLE MR. BHAGWATI PRASAD, J.

Mr. S.L. Jain for the petitioner.
Mr. Ravi Bhansali for the respondent.

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Heard.

Learned counsel for the petitioner has raised two questions. One relates to limitation and another is whether the offence of non-payment of cess is a continuing offence or not. As regards the question of limitation, this is a mixed question of fact and law. Learned counsel is required to agitate the question of facts to establish whether limitation is governing his case or not. As regards the question of continuing offence, suffice it to say that there is a different of opinion of this Court in more than two cases. That being the position, learned counsel submits that the matter requires to be referred to a larger Bench. I am afraid this is not necessary because the payment of cess has been held to be a case where until the tax is paid, the liability subsists and it is obligatory on all the citizens to pay tax. As and when cess tax is not paid, offence is a continuing offence. That being the position, there is not necessity to refer the matter to a larger Bench. Reference in this connection can be made to a decision of this Court in the matter of Dilavar Hussain Vs. State of Rajasthan & Anr. (S.B. Criminal Misc. Petition No. 292/2001) decided on 03.12.2001.

Another argument of the learned counsel for the petitioner is that the sale was made at Rawatsar and therefore, it is not taxable at Pilibanga. This is also a question of fact which has to be raised before the trial court.

In that view of the matter, the petitions are not entertained and are hereby dismissed. The questions sought to be raised before this Court will be available to be raised before the trial court.

With these observations, the misc petitions are disposed of.

(BHAGWATI PRASAD), J.

bjsh